



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO. 6342 OF 2022
WRIT PETITION NO. 7514 OF 2022**

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WRIT PETITION NO. 6342 OF 2022

Sarika w/o. Mangesh Sabne .. Petitioner

VERSUS

The State of Maharashtra & Others .. Respondents

WRIT PETITION NO. 7514 OF 2022

Sau. Saraswati w/o. Subhash Ghone .. Petitioner

VERSUS

The State of Maharashtra & Others .. Respondents

Mr.U.L. Momale, Advocate for the petitioner in WP 6342/2022.

Mr.Vivekanand B. Deshmukh, Advocate for respondent Nos. 4 to 8 in WP 6342/2022.

Mr.Mahesh S. Deshmukh, Advocate for the petitioner in WP 7514/2022.

Mr.Rajendra Deshmukh, Sr. Advocate i/b. Mr. D.R. Deshmukh, Advocate for respondent No.4 in WP 7514 of 2022.

Mr. P.D. Patil, AGP for respondent Nos. 1 to 3 – State.

**CORAM : KISHORE C. SANT, J.
RESERVED ON : 03.12.2024
PRONOUNCED ON : 22.01.2025**

ORDER :-

01. Both these Writ Petitions arise out of a dispute between mother and daughter on a CL-3 licence under the Bombay Prohibition

Act. The petitioner in Writ Petition No. 6342 of 2022 is daughter. Writ Petition No.7514 of 2022 is filed by the mother. Both the parties have approached this Court challenging an order passed by learned Principal Secretary, Excise, State of Maharashtra, rejecting the revision filed by the petitioner and respondent No.4. The learned Principal Secretary by way of the impugned order has confirmed the order passed by the Commissioner, State Excise, confirming the order passed by the Collector, by which he cancelled the CL-3 licence standing in the name of the petitioner. It is further prayed that the licence be renewed in the name of the petitioners.

02. For the sake of convenience, petitioner - Sarika in WP 6342/2022 and respondent No.4 in WP 7514/2022 is referred as "petitioner" and petitioner - Saraswati in WP 7514/2022 and respondent No.4 in WP 6342/2022 is referred as "respondent No.4".

03. Facts in short as stated in WP 6342/2022 are that CL-3 licence was standing in the name of one Vishnupant Ghone, who happened to be grandfather of the petitioner and father-in-law of respondent No.4. Said Vishnupant was carrying on liquor business having CL-III licence. The petitioner got married on 18.12.2011 and

since thereafter she is residing with her husband. Prior to marriage, in 2001 Vishnupant had already transferred the licence in the name of the petitioner. In 2018, father of the petitioner told that she is not concerned with the business of the licence and she should not ask for any account as the licence no more stands in her name. On this, the petitioner applied under the Right to Information Act and solicited information in respect of CL-3 licence from the office of the Collector, State Excise, Osmanabad – respondent No.3. In response to the same, it was informed that the said licence is transferred in the name of respondent No.4 on 04.07.2015.

04. Respondent No.4 is mother, respondent No.5 is father, respondent No.6 is brother, respondent No.7 is another sister and respondent No.8 is also related to the petitioner. It is alleged that respondent Nos.4 to 8 by preparing forged documents, got the licence transferred in the name of respondent No.4.

05. The petitioner, therefore, filed application to respondent No.3 requesting him to transfer the licence in the name of the petitioner. On receipt of such application, respondent No.3 directed an enquiry and called for report from the Inspector, State Excise, Osmanabad. The

report was submitted on 23.06.2019 by the Inspector. In the enquiry it is stated that statement was recorded of the petitioner on receipt of application dated 10.11.2014 for transfer of licence in the name of respondent No.4. It was stated to the Office that the petitioner was not well and therefore was not able to attend the office. Therefore, one Datta Trimukhe along with Sub-Inspector Mr. Halwankar visited the house of respondent on 18.03.2015. There a girl, namely, Sarika gave her statement that she has no objection to transfer licence in the name of respondent No.4 and signed the statement. Now, it is alleged by the petitioner that the photo appearing on the statement is of respondent No.7 – Sheetal younger sister of the petitioner.

06. On receipt of report, the learned Collector, Osmanabd on recording that there is something fishy, passed an order cancelling the licence by order dated 28.07.2021, in the complaint filed by the petitioner. The petitioner and respondent No.4 approached the Commissioner, State Excise, Mumbai. The learned Commissioner also confirmed the order passed by the Collector. Thus, both the parties approached the Principal Secretary by filing Revision Application No.1 of 2022, filed by respondent No.4 and Revision Application No. 3 of 2022 by the petitioner, on various grounds. The learned Principal Secretary

confirmed the orders passed by the Authorities, by order dated 22.04.2022.

07. This Court, without going much into the allegations and counter-allegations finds that, when complaint was filed by the petitioner, it was for the Authorities to take decision as to which of the party is entitled to renewal of CL-3 licence. In the present case, however, the Authorities only by recording finding that there appears to be fraud, have cancelled the licence.

08. Learned Sr. Advocate Mr. Deshmukh argued vehemently that the licence needs to be restored in the name of the petitioner and learned Advocate appearing for the respondent that the licence needs to be restored in the name of the respondent. This Court finds that, without going into the merits, the learned Collector should have decided as to who is entitled to the licence. Instead of doing such exercise, the learned Collector directly cancelled the licence. The dispute before the learned Collector was as to who is entitled to licence and whether the licence was validly transferred in the name of respondent No.4. When the nature of the dispute was such, it was necessary to make proper enquiry and either to restore licence in the name of the petitioner or to

hold that it is rightly transferred in the name of respondent No.4. The learned Collector, certainly committed a mistake by cancelling the licence. The learned Commissioner and learned Principal Secretary also committed error in confirming the order, instead of deciding entitlement of the parties.

09. In view of the above, the following order :-

- (i) Both the writ petitions are partly allowed.
- (ii) The impugned order is quashed and set aside.
- (iii) The matter is remanded back to the learned Collector (Excise), Osmanabad (Dharashiv) for deciding afresh on the basis of material, which is already produced before him and to decide as to who is entitled to the CL-3 licence.
- (iv) Above exercise shall be completed as early as possible and in any case before 30.06.2025.

[KISHORE C. SANT, J.]